less the fault is that of the pilot alone. See *Homer Ramsdell Trans. Co.* v. *Compagnie Generale Transatlantique, supra,* 849. The burden of proving such defense is on the defendant. See *Camp* v. *Marcellus* (1860) 1 Cliff. 481, Fed. Case No. 2347, p. 1145.

NEGLIGENCE—ATTRACTIVE NUISANCE.—The plaintiff, a boy of eight, was burned by the defendant's power wire where it was carried over a city owned bridge on cross arms supported by trellis work affixed to the top of the bridge. The plaintiff climbed the upright and grasped the wire. Boys frequently climbed the bridge with the defendant's knowledge who had ordered them away. *Held,* for the plaintiff. *New York, N. H. & H. R. R.* v. *Fruchter* (C. C. A. 2d Cir. 1921) 271 Fed. 419.

The liability in the instant case is based on the so-called "attractive nuisance" doctrine. Liability rests on a failure properly to safeguard dangerous things which allure children to their injury. *Railroad Co.* v. *Stout* (1873) 17 Wall. 657. Some courts reject the doctrine in its entirety. *Wheeling & L. E. R. R.* v. *Harvey* (1907) 77 Oh. St. 235, 83 N. E. 66; *Walker* v. *Potomac F. & P. R. R.* (1906) 105 Va. 226, 53 S. E. 113. Others tend to restrict the principle. See *Mayfield W. & L. Co.* v. *Webb* (1908) 129 Ky. 395, 401, 111 S. W. 712; *Erickson* v. *Great Northern Ry.* (1900) 82 Minn. 60, 67, 84 N. W. 462. The object which causes the injury need not be alluring; it is sufficient that it was maintained in dangerous proximity to something attractive, whether that object was owned by the defendant or not. *Consolidated El. L. & P. Co.* v. *Healy* (1902) 65 Kan. 798, 70 Pac. 884. The plaintiff is bound to use such care as average children of his age, capacity and intelligence are capable of, or there is no liability. *City of Pekin* v. *McMahon* (1895) 154 Ill. 141, 39 N. E. 484. If due care was taken to prevent danger reasonably to have been anticipated there is no liability. *Graves* v. *Washington Water Power Co.* (1906) 44 Wash. 675, 87 Pac. 956. The doctrine is an exception to the general rule of liability to trespassers, for the protection of children. See *Mattson* v. *Minnesota & N. W. R. R.* (1905) 95 Minn. 477, 481, 104 N. W. 443. The decision in the principal case is a sound application of the attractive nuisance doctrine and involves no extension of the federal rule.

SALES—C. I. F. CONTRACT—MEASURE OF DAMAGES.—Action by a vendor in Chicago for breach of contract to sell 5000 lbs. of thorium to an English vendee, c. i. f. London dock. *Held,* that the measure of damages was the difference between the contract price and the market price at London, the destination. *Seaver* v. *Lindsay Light Co.* (2d Dept. 1921) 196 App. Div. 397, 187 N. Y. Supp. 622.

The usual measure of damages for the breach of a contract to sell, where no special damages are proved, is the difference between the contract price and the market price at the place of delivery. See *Orester* v. *Dayton Mfg. Co.* (1920) 228 N. Y. 134, 137, 126 N. E. 510. Where there is a market at the place of delivery that is the only rule. *Saxe* v. *Penokee Lumber Co.* (1899) 159 N. Y. 371, 54 N. E. 14. In such case evidence of the market value at the point of destination, when that differs from the place of delivery, is inadmissible. *Specialty Furniture Co.* v. *Kingsbury* (Tex. Civ. App. 1901) 60 S. W. 1030. The market value at the time the goods ought to have been delivered, controls. Uniform Sales Act §§ 67(3), 148; *Fowler* v. *Gress Mfg. Co.* (1916) 94 Misc. 650, 158 N. Y. Supp. 524. Ordinarily when the buyer pays the freight and insurance, delivery to the carrier is a delivery to the buyer, and the risk of loss passes to him upon shipment. Uniform Sales Act § 46(1); *United States* v. *Andrews* (1907) 207 U. S. 229, 28 Sup. Ct. 100. Also in c. i. f. contracts the risk of loss passes to the buyer upon shipment. See (1920) 20 COLUMBIA LAW REV. 101. It seems that in such contracts, since the buyer indirectly pays the

freight and the insurance, the place of shipment is the place of delivery. See *Klipstein & Co.* v. *Dilsizian* (C. C. A. 1921) 273 Fed. 473, 475. In the instant case there was a market for thorium at the place of shipment. Therefore, the measure of damages should be the market value at that place plus freight and insurance to the destination. Uniformity and consistency with the general rule of damages as stated at the outset would thus be secured without injustice to the buyer.

STATUTES—WRONGFUL DEATH—RECOVERY UNDER FEDERAL STATUTE NO BAR TO RECOVERY UNDER STATE STATUTE.—A personal representative sued one joint tort-feasor for the wrongful death of his intestate under the Federal Employers' Liability Act, (1908) 35 Stat. 65, 66, (1909) 36 Stat. 291, U. S. Comp. Stat. (1916) §§8657-8665, and recovered for the benefit of the widow and children. The same representative now sues the other under Neb. Rev. Stat. (1913) §§1428-1429 for the benefit of the next of kin—the mother. *Held,* the defendant is liable. *Moore* v. *Omaha Warehouse Co.* (Neb. 1921) 182 N. W. 597.

Where one set of physical facts gives rise to torts against several people, recovery by one of them is no bar to recovery by another. *Denver Consol. Tram. Co.* v. *Riley* (1889) 14 Colo. App. 132, 59 Pac. 476. In statutes like that in the instant case, "damages" means the pecuniary loss caused the beneficiary. *Anderson* v. *Chicago B. & Q. R. R.* (1892) 35 Neb. 95, 52 N. W. 840. Failure to allege damage to the beneficiary will defeat recovery. *Gulf, Col. etc. Ry.* v. *McGinnis* (1913) 228 U. S. 173, 33 Sup. Ct. 426. The recovery is the property of the beneficiary. *Taylor* v. *Taylor* (1914) 232 U. S. 363, 34 Sup. Ct. 350. The administrator recovers only as trustee of the cause of action. See *Kansas City South. Ry.* v. *Leslie Adm'r of Old* (1915) 238 U. S. 599, 604, 35 Sup. Ct. 844. The tort-feasor has committed a wrong not only against the decedent, but also against those named in the statute as beneficiaries. In the instant case, the federal law declared a wrong to have been committed against the widow and children, while the state statute declared one to have been committed against the mother. Different causes of action, therefore, arose in favor of different parties out of the same group of physical facts. Recovery by one under the federal law, therefore, could not bar a recovery by the other under the state law, even against the same tort-feasor; *a fortiori,* it could not bar a recovery against a joint tort-feasor. The rights of the mother could not have been adjudicated in the federal court, nor could the rights of the widow and children have been adjudicated in the state court. The instant case harmonizes with the general construction of "beneficiary" statutes although it is directly *contra* to *St. Louis etc.* v. *Seale* (1913) 229 U. S. 156, 33 Sup. Ct. 651.

TRANSFER TAX — NON-RESIDENT DECEDENT — STOCK PLEDGED IN NEW YORK.—The decedent, a resident of New Jersey, left an estate including stock pledged in New York. *Held,* pledged stock subject to transfer tax. *Matter of Hallenbeck* (1921) 231 N. Y. 409.

In New York, a tax is imposed upon the transfer of the property of non-resident decedents of which the decedent died possessed in the state. N. Y. Cons. Laws (1909) c. 60, § 220(2), as amended by laws of 1916, c. 323, § 220; *Matter of Penfold* (1915) 216 N. Y. 163, 110 N. E. 497. The question was presented, therefore, in the instant case whether, at the time of death, the decedent passed property in the pledged stock or only a power to redeem, having its situs at the domicile of the decedent. In ordinary pledges it is well settled that the pledgor retains the ownership of the pledge. *McLeod* v. *Bank of St. Louis* (1887) 122 U. S. 528, 7 Sup. Ct. 1212. The pledgee merely